

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CELESTINO TRUJILLO, in his capacity as
Wrongful Death Personal Representative of
THE ESTATE OF FABIAN A. TRUJILLO, Deceased,
and EDITH TRUJILLO, as Next Friend for and on behalf of
CELESTE TRUJILLO, a Minor, and RAYNEE GERHART,
as Next Friend for and on behalf of LOGAN TRUJILLO, a Minor,

Plaintiffs,

vs.

Case No. _____

CHARLES CAMPBELL,
BOOTH BROTHERS LAND AND LIVESTOCK,
GARY BOOTH, OREN MATTHEWS, and
NEW MEXICO DEPARTMENT OF TRANSPORTATION,

Defendants.

NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. SECTION 1441(B)

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendants Charles Campbell, Booth Brothers Land and Livestock, and Gary Booth hereby remove to this Court the State Court action described below.

1. On February 25, 2011, Plaintiffs filed their Complaint entitled Celestino Trujillo, in his Capacity as Wrongful Death Personal Representative of the Estate Of Fabian A. Trujillo, Deceased, and Edith Trujillo, as Next Friend For and On Behalf of Celeste Trujillo, a Minor, and Raynee Gerhart, as Next Friend For and On Behalf of Logan Trujillo, a Minor, v. Charles Campbell, Booth Brothers Land And Livestock, Gary Booth, Oren Matthews, and New Mexico Department Of Transportation, as Cause No. D-412-CV-2011-98, in the Fourth Judicial District

Court, County of San Miguel, State of New Mexico. (*See*, Plaintiffs' Complaint, attached hereto as Exhibit A).

2. Upon information and belief, Plaintiffs are citizens of New Mexico. (*See*, Exhibit A, ¶¶ 1-6.

3. Defendants Charles Campbell, Booth Brothers Land and Livestock, and Gary Booth are residents of Colorado. Pursuant to 28 U.S.C. §1441(b), these Defendants are not citizens of New Mexico.

4. These Defendants affirmatively assert that the joinder of Defendants Oren Matthews and the New Mexico Department of Transportation as Defendants in this matter was solely for the purpose of destroying diversity. As such, Defendants rely upon the Doctrine of Fraudulent Joinder and specifically allege that the allegations made against Defendants Matthews and the New Mexico Department of Transportation have no merit. (*See, Smoot v. Chicago, Rock Island, and Pacific R.R. Co.*, 378 F.2d 897 (10th Cir. 1997)).

5. Accordingly, pursuant to 28 U.S.C. §1332(a), diversity of citizenship exists between all parties.

6. Defendants' time to answer or remove with respect to the Complaint has not expired. (*See* Attorney Affidavit, attached hereto as Exhibit B).

7. Pursuant to 28 U.S.C. § 1332(a), the amount in controversy exceeds \$75,000.00, exclusive of interests and costs. (*See* Attorney Affidavit, attached hereto as Exhibit B).

8. Defendants are filing a Notice of Removal with the Clerk of the Fourth Judicial District Court, County of San Miguel, State of New Mexico, pursuant to 28 U.S.C. § 1441(b), together with this Notice.

9. Pursuant to D.N.M. LR-CIV 81.1(a), Defendants will submit copies of the records and proceedings from the State Court action within thirty days of filing this Notice of Removal.

CIVEROLO, GRALOW, HILL & CURTIS, P.A.

By: 

William P. Gralow

Lance D. Richards

Kallie D. Kuehl

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Booth Brothers Land and Livestock, and
Gary Booth

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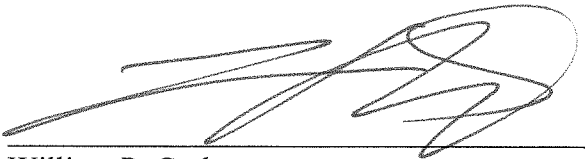
Phone: 505/842-8255; Fax: 505/764-6099

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Notice of Removal of Action Under 28 U.S.C. Section 1441(B) was mailed to:

Robert M. Ortiz, Esquire
Will Ferguson & Associates
1720 Louisiana Boulevard, NE, Suite 100
Albuquerque, New Mexico 87110

this 29th day of March, 2011.



William P. Gralow

Lance D. Richards

Kallie D. Kuehl